

CONFIDENTIAL

HARDY & ELLISON, P.C.

CONSULTING ATTORNEYS

SUITE 100

9306 OLD KEENE MILL ROAD

BURKE, VIRGINIA 22015

(703) 455-3600

TELECOPIER (703) 455-3603

RECEIVED

JUL 29 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

G. TODD HARDY
(ADMITTED IN D.C. & VA.)
(703) 455-3601 DIRECT

MARK C. ELLISON
(ADMITTED IN FL & GA ONLY)
(703) 455-3602 DIRECT

July 29, 1994


Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, N.W.
Washington, DC 20554

Re: CS Docket No. 94-48; Annual Assessment of the Status of Competition in
the Market for Delivery of Video Programming

Dear Mr. Caton:

On behalf of our client, PrimeTime 24 Joint Venture, please accept the attached
Reply Comments in the record of the Notice of Inquiry issued in the identified above
Docket.

Very truly yours,



G. Todd Hardy

Enclosure

GTH/dw

No. of Copies rec'd 0410
List ABCDE

Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

RECEIVED

JUL 29 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In The Matter Of:)	
)	
Implementation Section 19 of the Cable)	
Television Consumer Protection and)	
Competition Act of 1992)	CS Docket No. 94-48
)	
)	
Annual Assessment of the Status of)	
Competition in the Market for Delivery)	
of Video Programming)	

REPLY COMMENTS OF PRIMETIME 24

By Its Attorneys

**G. Todd Hardy, Esq.
Hardy & Ellison
9306 Old Keene Mill Road
Suite 100
Burke, Virginia 22015**

July 29, 1994

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.**

RECEIVED

JUL 29 1994

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In The Matter Of:)	
)	
Implementation Section 19 of the Cable)	
Television Consumer Protection and)	
Competition Act of 1992)	CS Docket No. 94-48
)	
)	
Annual Assessment of the Status of)	
Competition in the Market for Delivery)	
of Video Programming)	

REPLY COMMENTS OF PRIMETIME 24

I. Introduction

PrimeTime 24 Joint Venture ("PrimeTime 24") is engaged principally in the retransmission of the broadcast television signals of WABC-TV (ABC, New York), WRAL-TV (CBS, Raleigh) and WXIA-TV (NBC, Atlanta) for the benefit of C-Band home satellite dish ("HSD") owners and a small number of cable operators located throughout the United States. PrimeTime 24 operates as a "satellite carrier" under the Satellite Home Viewer Act of 1988 (the "SHVA") in its delivery of signals to HSD consumers. It provides retransmission service to its cable operator customers located in the United States, as a "passive carrier."

In 1986, PrimeTime 24 dedicated its business to the delivery of network programming to households that were unserved by traditional distribution media, in regions commonly referred to as "white areas".¹ As the marketplace developed, PrimeTime 24's business became almost entirely associated with wholesale distribution of programming subscriptions. As a result, PrimeTime 24 is currently both a "multichannel video programming distributor" for purposes of its direct sale of packaged video subscription services to consumers² and a "satellite broadcast programming vendor" to the extent it is engaged in the wholesale distribution of its retransmitted broadcast signals through HSD and cable distributors.

II. Commission Authority to Require Reporting Requirements

As noted in Paragraph 81 of the Notice of Inquiry, the Commission recognizes that its authority to impose periodic reporting requirements on multichannel distributors and vertically integrated programming vendors is subject to debate. To the extent that issue applies to HSD distribution, PrimeTime 24 supports the Comments filed by Home Box Office in this Docket. The Commission does not have the jurisdiction to require the filing of materials or reports under Section 19(f)(2) of the 1992 Cable Act outside the context of allegations of violation of Section 19 of the Act. Authority granted under Section 19(f)(2) is limited to procedures to be followed in distributor complaint proceedings and does not provide broader authority for mandatory reporting for purposes of Section 19(g).

¹The SHVA authorizes "satellite carriers" such as PrimeTime 24 to sell subscriptions to network retransmission service to HSD owners residing in "unserved households", i.e. generally speaking, residences that do not receive the signal of a given network or networks from broadcast affiliates or cable operators.

²In addition to the delivery of retransmitted broadcast signals, PrimeTime 24 offers subscriptions to a package of cable and broadcast services under distribution agreements with other programming vendors.

III. Balance of Interests - Burdens v. Benefits

Commenters in this Docket have already expressed a need for protection of proprietary information that may be submitted with regard to future Commission annual reports to Congress. PrimeTime 24 submits that assurances of confidential treatment of that information could be insufficient to protect the proprietary interests of reporting parties.

Distribution of programming to HSD consumers is accomplished by a relatively small circle of vendors and distributors. Transaction specific information may be identified and used by competitors, even if reported or analyzed on an anonymous basis. Even accumulated data concerning HSD subscriber sales could be susceptible to use by competitors under some circumstances, given the fact that there are sometimes as few as two providers of certain programming services.

Since the real focus of Section 19 is to limit abusive behavior in the marketplace and provide annual reporting about the health and well-being of the industries involved, the most telling information will come from the complaint proceedings already addressed by the Commission under that Section. Throughout each calendar year, complaining distributors may institute proceedings that will highlight the kind of discriminatory behavior that Congress attempted to address in Section 19. To the degree those proceedings involve analysis of non-proprietary information, they will provide much more meaningful input for the "annual report card" required of the Commission under Section 19(g) than either data related to specific non-discriminatory arrangements or accumulated industry totals.

Given the potential for injury to competitors and the availability of some meaningful data in complaint proceedings conducted each year, the balance of interests weighs heavily against the institution of annual reporting requirements for distributors and integrated vendors.

IV. Scope of Reporting Requirements

If reporting requirements are established, the Commission should resist any suggestion that those requirements apply to entities or relationships that do not directly relate to the focus of Section 19 -- the involvement of the cable industry in the development of the video marketplace.

As noted in the Conference Report for the 1992 Cable Act, Section 19 was meant to affect rules that would address certain cable industry practices:

"In adopting rules under this section, the conferees expect the Commission to address and resolve the problems of unreasonable cable industry practices, including restricting the availability of programming and charging discriminatory prices to non-cable technologies. The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable and extending programming to areas not served by cable." (Conference Report p. 93)

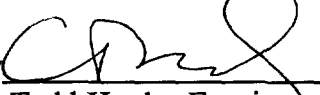
In order to respond to the Congressional focus on cable dominance in the marketplace and the distribution of programming in which the cable industry has an interest, the Commission should only consider reporting requirements for distributors that compete in the direct sale of programming to consumers and the vertically integrated vendors who sell that programming to those distributors -- "multichannel distributors and vertically integrated programming vendors" named in Paragraph 81 of the Notice. The scope of reporting parties should not be unnecessarily expanded to

include other groups of marketplace participants such as "all satellite carriers". Further, only those entities that serve more than a threshold number of subscribers should be required to submit annual reports, in order to minimize the impact of additional reporting requirements on the smallest marketplace participants.

V. Conclusion

The Commission does not have the general authority to require annual reporting requirements of HSD marketplace participants under Section 19(f)(2). Any requirement that transaction specific information be filed by HSD participants, beyond the context of distributor complaints, threatens the status of HSD competitors in the marketplace. To the extent reporting requirements are established, they should be limited to multichannel distributors and integrated programming vendors of significant size.

Respectfully submitted,
PrimeTime 24 Joint Venture

By 
G. Todd Hardy, Esquire
Hardy & Ellison, P.C.
9306 Old Keene Mill Road
Suite 100
Burke, Virginia 22015

Its Attorneys

July 29, 1994

29-B:comp.pt